

INTERNAL REVENUE SERVICE

DEPARTMENT OF THE TREASURY

P.O. BOX 2508
CINCINNATI, OH 45201
ATTN: TE/GE, QUALITY ASSURANCE

Date: AUG 26 2002

Employer Identification Number:

Contact Person:

Contact Telephone Number:

fax

Dear Applicant:

We have considered your application for recognition of exemption under section 501(c)(4) of the Internal Revenue Code.

The information submitted indicates that you were incorporated on [REDACTED] in [REDACTED]. Your stated purpose is the promotion of property improvement and safety, health and welfare of the residents of [REDACTED] a residential subdivision.

FACTS:

According to your application you conduct the following activities:

1. Maintain and landscape esplanades, entrances roadsides and common area of the subdivision. The roads are unrestricted public roads and are accessible and used by the general public.
2. Provide pest control in the common areas.
3. Maintain and operate a swimming pool. Usage of the pool is limited to members (subdivision residents) and their guests, except that nonmembers may use the pool on occasion for swim lessons and for swim team meets; you do not publicize these activities to nonresidents except by "word of mouth." You state that nonresidents may also buy an annual membership; however, you do not publicize this and have had no nonresident annual members in the last 4 years.
4. Contract with [REDACTED] to provide streetlights on the public roads within the subdivision.
5. Monitor and approve all architectural improvements and new construction within the subdivision.
6. Maintain two park/playgrounds that are available to the subdivision residents and the general public.

Rev. Rul. 80-63, 1980-1 C.B. 116 answers specific questions as to whether the conduct of certain homeowners' association will affect the exempt status under section 501(c)(4) of the Code otherwise qualifying homeowners' associations. Question 2 asks whether a homeowners' association, which represents an area that is not a community, qualifies for exemption under section 501(c)(4) if it restricts the use of its recreational facilities, such as swimming pools, tennis courts, and picnic areas, to members of the association. The response refers to Rev. Rul. 74-99 and points out that the use and enjoyment of the common areas, which includes recreational facilities, must be extended to members of the general public, as distinguished from controlled use or access restricted to the members of the association.

Rev. Rul. 80-205, 1980-2 C.B. 184 holds that a corporation that provides recreational activities that are restricted to the employees of certain corporations is primarily benefiting a private group rather than primarily benefiting the common good and general welfare of the community and thus the organization did not qualify for exemption under section 501(c)(4).

In *Flat Top Lake Association, Inc. v. the United States of America*, 1986 TNT 219-31, the Court held that the Association does not confer benefits of the public welfare nature upon the public at large because it restricts its facilities to the exclusive use of its members. The Court held that the Association did not qualify for exemption under section 501(c)(4).

In *Rancho Santa Fe Association v. United States of America*, 84-2 USTC 9536, 584 F.Supp, the Court held that the Association constituted an independent community for purposes of Reg. 1.501(c)(4)-1 and thus there was no further requirement that the Association make its golf course and tennis courts available to the general public. The Association consisted of approximately 3,000 members. The Association owned 600 acres of which 300 acres were dedicated to parkland and open space; 165 acres were improved as playgrounds, athletic fields, a public parking lot, a community club house, and hiking and bridle trails. The remaining 135 acres comprised an 18-hole golf course and eight tennis courts. Except for the golf course and tennis courts, all the other areas were open to the public (465/600 acres).

In deciding whether the Association was a "community" as defined in Reg. 1.501(c)(4)-1, the Court noted that the Association was a housing development significant in size and self-contained in orientation. Rancho Santa Fe had its own post office and zip code. The Court held that the Association performed the functions of a governmental entity and that the Association served as a liaison to larger governmental bodies. It did not represent the ordinary residential grouping of tract homes, but was an independent community separated geographically for the central area of the city of San Diego of which Ranch Santa Fe was a sub-part.

ORGANIZATION'S POSITION:

In your letter dated [REDACTED], you state that [REDACTED] is coextensive with a community and thus all accomplishments benefit the general public. You state that it is not a requirement that you benefit the "world-at large". You state that non-members can avail themselves of the park and greenbelts, swim lessons, swim team, swimming pool on a guest basis, facilities membership option, roadside/esplanade maintenance and common area lighting. You state the critical factor is that you benefit the community you serve and represents (the subdivision) on an unrestricted basis. You further state that for purposes of section 501(c)(4), a neighborhood, precinct, subdivision, or housing development may constitute a community. You state that you are equivalent in size and function to the Association in *Rancho Santa Fe v. United States* (S.D. Cal. 1984).

ANALYSIS AND CONCLUSION:

Our analysis of your case indicates that you were formed to benefit the [redacted] residents of your neighborhood [redacted] and that you do not represent a "community" as defined in Rev. Rul. 74-99. The ruling states that in order to meet the definition of "community", an organization must engage in activities that confer benefit on a community comprising a geographical unit which bears a reasonable recognizable relationship to an area ordinarily identified as a governmental subdivision or a unit or district thereof. You have not provided any information that you are anything other than a residential grouping of tract homes. You do not have any of the qualities of a community as discussed in the *Rancho Santa Fe* court case. In that case, the Association was found to be coextensive with the residential community of Rancho Santa Fe, which had its own Zip code and post office, and which was geographically separated from the central area of the city of San Diego. You represent a single residential subdivision in a developed area of other subdivisions. Although access to your roads is not restricted, the layout of the subdivision is such that most roads would normally only be used by residents. As you do not meet the definition of a "community", you cannot restrict the use of your recreational activities and still qualify for exemption under section 501(c)(4) as noted in Rev. Rul. 80-63. Even though you state that your swimming pool and tennis courts are available to the general public, they really are restricted in that a non-member must be accompanied by a member of your organization in order to use these recreational facilities. Although you state that nonresidents may purchase annual memberships to use swim and tennis facilities, you do not publicize this and do not have any such members.

You can be compared to the organization discussed in Rev. Rul. 80-205, which restricted the use of its recreational facilities to employees of certain corporations and thus failed to qualify for exemption under section 501(c)(4).

You can also be compared to the organization discussed in the *Flat Top Lake Association* which did not qualify for exemption under section 501(c)(4) because it restricted its facilities to the exclusive use of its members.

Accordingly, based on the facts as represented in your application and subsequent letters, the above tax law, Revenue Rulings and Court cases, we conclude that you are not a social welfare or civic league as described in section 501(c)(4) of the Code and that you do not qualify for recognition of exemption from Federal income tax.

If you are in agreement with this proposed determination, we request that you sign and return the enclosed Form 6018. Please note the instructions for signing on the reverse side of this form.

If you are not in agreement with this proposed determination, we recommend that you request a hearing with our office of Regional Director of Appeals. Your request for a hearing should include a written appeal giving the facts, law, and any other information in support of your position as explained in the enclosed Publication 892. We will be contacted to arrange a date for a hearing. The hearing may be held at the Office of Regional Director of Appeals, or if you request, at a mutually convenient District office.

[REDACTED]

If we do not hear from you within 30 days from the date of this letter, and you do not protest this proposed determination in a timely manner, it will then become the final determination.

If you have any questions, please contact the person whose name appears on the heading of this letter.

Sincerely,

Bio J. Lerner

Director, Exempt Organizations

cc: [REDACTED]

Enclosures:
Form 6018
Publication 892